

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF INSURANCE**

**CHAPTER 0780—1—54  
SELF-INSURED WORKERS' COMPENSATION POOLS**

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**0780—1—54—.01 PURPOSE AND SCOPE.** The provision of this chapter shall apply to workers' compensation self-insurance groups. This chapter shall not apply to public employers of governmental entities. Groups which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided herein.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.02 DEFINITIONS.**

- (1) "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day to day management of the group.
- (2) "Commissioner" means the Commissioner of Commerce and Insurance.
- (3) "Insolvent" or "insolvency" means the inability of a workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown by an excess of its required reserves and other liabilities over its assets.
- (4) "Net premium" means premium derived from standard premium adjusted by any advance premium discounts.
- (5) "Service company" means a person or entity which may provide services, including but not limited to:
  - (a) claim adjustment,
  - (b) safety engineering,
  - (c) compilation of statistics and the preparation of premium, loss and tax reports,
  - (d) preparation of other required self-insurance reports,
  - (e) development of members' assessments and fees, and
  - (f) administration of a claim fund.

(Rule 0780—1—54—.02, continued)

- (6) “Standard premium” means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.
- (7) “Workers’ compensation”, when used as a modifier of benefits, liabilities or obligations, means both workers’ compensation and employer’s liability.
- (8) “Workers’ compensation self-insurance group” means ten (10) or more employers of the same trade or professional association which enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers, as set forth in T.C.A. §50—6—405 (a) (2). The trade or professional association shall have been in active existence for at least five (5) years and such association:
  - (a) Shall have a constitution or by-laws,
  - (b) Shall have members that support the association by regular payment of dues on an annual, semi-annual, quarterly, or monthly basis, and
  - (c) Shall be created in good faith for purposes other than that of creating workers’ compensation self-insurer pools.
- (9) The terms “pools, funds, groups” shall have the same meanings for the purpose of these rules.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.03 AUTHORITY TO ACT AS A WORKERS’ COMPENSATION SELF-INSURANCE GROUP.** No person or entity shall act as a workers’ compensation self-insurance group except as so authorized by the commissioner.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.04 QUALIFICATIONS FOR INITIAL APPROVAL AND CONTINUED AUTHORITY TO ACT AS A WORKERS’ COMPENSATION SELF-INSURANCE GROUP.**

- (1) A proposed workers’ compensation self-insurance group shall file, with the commissioner, its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of five hundred dollars (\$500.00). The application shall include the group’s name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:
  - (a) Proof of compliance with the provisions of subsection (2) of this section.
  - (b) A copy of the articles of association, if any.
  - (c) A copy of agreements with the administrator and with any service company.
  - (d) A copy of the by-laws of the proposed groups.
  - (e) A copy of the agreement between the group and each member securing the payment of workers’ compensation benefits.
  - (f) Designation of the initial board of trustees and administrator.
  - (g) The address in this state where the books and records of the group will be maintained at all times.
  - (h) Documentation in a form acceptable to the commissioner showing the financial ability of the group to pay workers’ compensation obligations of its members.

(Rule 0780—1—54—.04, continued)

- (i) Proof of payment to the group by each member of not less than twenty-five percent (25%) of that member's first year estimated annual net premium on a date prescribed by the commissioner. Such payment shall be considered the initial premium payment of each member required by 0780—1—54—.18, if the proposed group is granted a certificate of approval.
- (2) To obtain and to maintain its certificate of approval, a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:
  - (a) A combined net worth of all members of a group sufficient to pay all claims under the workers' compensation law.
  - (b) Security in a form and amount prescribed by the commissioner which shall be provided by either a surety bond, security deposit or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidence of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured savings and loan association or credit union; or any bond or security issued by and backed by the full faith and credit of the State of Tennessee. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit or financial security endorsement shall be:
    - 1. For the benefit of the state solely to pay claims and associated expenses; and,
    - 2. Payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay.The commissioner may establish requirements for the amount of security based on differences among groups in their size, types of employments, years in existence, and other relevant factors; however, the commissioner may not require an amount lower than one hundred thousand dollars (\$100,000) for any group during its first year of operation.
  - (c) Specific and aggregate excess insurance in a form, in an amount and by an insurance company acceptable to the commissioner. The commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employments, years in existence and other relevant factors and may permit a group to meet this requirement by placing, in a designated depository, securities of the type referred to in paragraph (b) of this subsection.
  - (d) An estimated annual standard premium of at least one hundred fifty thousand dollars (\$150,000) during a group's first year of operation. Thereafter, the annual standard premium shall be at least two hundred fifty thousand dollars (\$250,000).
  - (e) An indemnity agreement jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the commissioner and shall include minimum uniform substantive provisions prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions needed because of its particular circumstances.
  - (f) A fidelity bond for the administrator in a form and amount prescribed by the commissioner.
  - (g) A fidelity bond for the service company in a form and amount acceptable to the commissioner. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount acceptable to the commissioner.

(Rule 0780—1—54—.04, continued)

- (3) A group shall notify the commissioner of any change in the information required to be filed under subsection (1) of this section or in the manner of its compliance with subsection (2) of this section no later than 30 days after such change.
- (4) The commissioner shall evaluate the information provided by the application required to be filed under subsection (1) of this section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.
- (5) The commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the commissioner is unable to act upon an application within this period, the commissioner shall have an additional 60 days to so act.
- (6) The commissioner shall issue to the group a certificate or letter of approval upon finding that the proposed group has met all the requirements, or he shall issue an order refusing upon finding that the proposed group does not meet all requirements.
- (7) Each workers' compensation self-insurance group shall be deemed to have appointed the commissioner as its attorney-in-fact to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the group for workers' compensation benefits.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.05 CERTIFICATE OF APPROVAL; TERMINATION.**

- (1) The certificate of approval issued by the commissioner to a workers' compensation self-insurance group authorizes the group to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.
- (2) The commissioner shall not grant the request of any group to terminate its certificate of approval until such time as it has demonstrated to the commissioner that it has made satisfactory arrangements to meet all its outstanding workers' compensation obligations and liabilities under its certificate of approval. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith. Subject to the approval of the commissioner, a group may merge with another group whose members are engaged in the same type of business only if the resulting group assumes in full all obligations of the merging groups. The commissioner shall hold a hearing on the merger if any party, including a member of either group, so requests.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.06 EXAMINATIONS.** The commissioner shall examine the affairs, transactions, accounts, records and assets of each group as often as the commissioner deems advisable, but not less often than once every five (5) years. The expenses of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.07 BOARD OF TRUSTEES: MEMBERSHIP, POWERS, DUTIES AND PROHIBITIONS.** Each group shall be operated by a board of trustees which shall consist of not less than five (5) persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors or members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

(Rule 0780—1—54—.07, continued)

- (1) The board of trustees shall:
  - (a) Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. That portion of the net premium sufficient to satisfy the claims fund requirement shall be placed into a designated depository for the sole purpose of paying claims, allocated claim expense, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account.
  - (b) Maintain minutes of its meeting and make such minutes available to the commissioner.
  - (c) Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
  - (d) Retain an independent certified public accountant to prepare the statement of financial condition required by subsection (1) of 0780—1—54—.11.
- (2) The board of trustees shall not:
  - (a) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.
  - (b) Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.08 GROUP MEMBERSHIP: TERMINATION, LIABILITY.**

- (1) An employer joining a workers' compensation self-insurance group after the group has been issued a certification of approval shall: (a) submit an application for membership to the board of trustees or its administrator and (b) enter into the indemnity agreement required by subsection (2) (c) of 0780—1—54—.04. Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.
- (2) Individual members of a group shall be subject to cancellation by the group pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the commissioner and the workers' compensation agency of the termination or cancellation of a member within ten (10) days and shall maintain coverage of each cancelled or terminated member thirty (30) days after such notice unless the group is notified sooner by the workers' compensation agency that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another group.
- (3) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership.

(Rule 0780—1—54—.08, continued)

- (4) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.
- (5) The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.09 SERVICE COMPANIES.**

- (1) No service company or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company.
- (2) Unless the commissioner otherwise permits, the service contract shall state that the service company shall handle to their conclusion all claims and other obligations incurred during the contract period.
- (3) All service companies must file a request for approval by the commissioner and have a letter or certificate of approval from the commissioner prior to engaging in any service to self-insured pools or groups. The commissioner may request any information deemed necessary to establish the ability, creditability and financial strength of the service company to perform the required functions.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.10 LICENSING OF AGENTS.** Any person soliciting membership in a self-insurance group must be licensed by the commissioner as a property and casualty agent to do so.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.11 FINANCIAL STATEMENTS AND OTHER REPORTS.**

- (1) Each group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form approved by the commissioner and shall include, but not limited to, adequate reserves for (a) known claims and expenses associated therewith, (b) claims incurred but not reported and expenses associated therewith, (c) unearned premiums and (d) bad debts, which reserves shall be shown as liabilities.
- (2) The commissioner may prescribe a uniform accounting system for all groups to ensure the accurate and complete reporting of groups' financial information.
- (3) The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.12 TAXES.** The tax on a workers' compensation self-insurers group shall be 4.4% of the premium collected, as provided in T.C.A. §56—4—207.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.13 MISREPRESENTATION PROHIBITED.** No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership of a group.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.14 INVESTMENTS.** Funds not needed for current obligations may be invested by the board of trustees in deposits in federally insured banks or savings and loan associations or in direct obligations of the United States Government or direct obligations of the State of Tennessee.

*Authority:* T.C.A. §50—6—405 (c). *Administrative History:* Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.15 RATES AND REPORTING OF RATES.**

- (1) Every workers' compensation self-insurance group shall adhere to a uniform classification system, uniform experience rating plan, and manual rules approved by the commissioner.
- (2) Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advanced premium discount reflecting the group's expense levels and loss experience.
- (3) Each group may be audited by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner. A group or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

*Authority:* T.C.A. §50—6—405 (c). *Administrative History:* Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.16 REFUNDS.**

- (1) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than 12 months after the end of the fund year. If a refund is declared, 10% of the refundable amount must be retained by the fund or pool for an additional year to cover any liabilities that may develop as a result of incurred but not reported losses for that period.
- (2) Each member shall be given a written description of the refund plan at the time of application for membership. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

*Authority:* T.C.A. §50—6—405 (c). *Administrative History:* Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.17 PREMIUM PAYMENT; RESERVES.**

- (1) Each group shall establish a premium payment plan acceptable to the commissioner.
- (2) Each group shall establish and maintain adequate loss reserves for (a) known claims and expenses associated therewith and (b) claims incurred but not reported and expenses associated therewith.
- (3) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

*Authority:* T.C.A. §50—6—405 (c). *Administrative History:* Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.18 DEFICITS AND INSOLVENCIES.**

- (1) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(Rule 0780—1—54—.18, continued)

- (2) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (a) surplus from a fund year other than the current fund year, (b) administrative funds, (c) assessment of the membership, if ordered by the group, or (d) such alternate method as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.
- (3) If the group fails to assess its members or to other-wise make up such deficit within thirty (30) days, the commissioner shall order it to do so.
- (4) If the group fails to make the required assessment of its members within thirty (30) days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date which such assessment is made, or within such longer period of time as may be specified by the commissioner, the group shall be deemed to be insolvent.
- (5) In the event of the liquidation of a group, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.19 CEASE AND DESIST ORDERS.**

- (1) After notice and opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this rule.
- (2) Upon finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may revoke the group's certificate of approval or any insurance license issued pursuant to this rule.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.

**0780—1—54—.20 REVOCATION OF CERTIFICATE OF APPROVAL.** After notice and opportunity for a hearing, the commissioner may revoke a group's certificate of approval if:

- (1) The group is found to be insolvent;
- (2) The group fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it, or
- (3) The group fails to comply with any of the provisions of this rule, or with any lawful order of the commissioner within the time prescribed.
- (4) Any certificate of approval that was issued to the group was obtained by fraud;
- (5) There was a material misrepresentation in the application for the certificate of approval;
- (6) The group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise in its fiduciary capacities.

**Authority:** T.C.A. §50—6—405 (c). **Administrative History:** Original rule filed April 8, 1986; effective May 8, 1986.